Wiley Rein LLP

1776 K STREET NW
WASHINGTON, DC 20006
PHONE 202.719.7000
FAX 202.719.7049

7925 JONES BRANCH DRIVE
McLEAN, VA 22102
PHONE 703.905.2800
FAX 703.905.2820

www.wileyrein.com

November 16, 2012

Michael E. Toner
202.719.7545
mtoner@wileyrein.com

BY HAND DELIVERY

Jeff S. Jordan, Esq.
Supervisory Attorney
Complaints Examination & Legal Administration
Office of General Counsel
Federal Election Commission
999 E Street NW
Washington, DC 20463

Re: MUR 6656 – Anchin, Block & Anchin LLP and Evan H. Snapper

Dear Mr. Jordan:

This firm represents Anchin, Block & Anchin LLP ("Anchin") and Evan H. Snapper ("Mr. Snapper") (collectively "Respondents") in the above-captioned MUR.

We have reviewed the Complaint filed on October 2, 2012, by Patricia D. Cornwell ("Ms. Cornwell" or "Complainant"). The Complaint alleges that the Respondents publicly disclosed confidential information relating to a Federal Election Commission ("FEC" or "Commission") enforcement action in violation of the Federal Election Campaign Act of 1971, as amended ("FECA" or "Act"), and Commission regulations. As is detailed below, there is no reason to believe that the Respondents violated the Act or Commission regulations. Accordingly, the Commission should promptly dismiss the Complaint.

I. FACTUAL BACKGROUND

On April 5, 2010, Anchin filed a *sua sponte* submission with the Commission identifying potentially serious violations of the Act allegedly committed by a number of persons, including Ms. Cornwell. Anchin's *sua sponte* submission resulted in the Commission opening MUR 6454 and naming Anchin, Mr. Snapper, and Ms. Cornwell as respondents. On March 3, 2011, Mr. Snapper entered into a conciliation agreement in MUR 6454 and agreed to pay a $65,000 civil penalty. On April 30, 2012, the FEC Office of General Counsel notified Anchin that the Commission had decided to take no action against Anchin in MUR 6454 and had closed the file pertaining to Anchin.

On August 13, 2012, the Respondents' counsel filed a joint motion in the United States District Court for the District of Massachusetts in connection with ongoing civil litigation involving Ms. Cornwell. *See* Defendants' Motion to Exclude, to Compel, and for Continuance, *CEI Enterprises, Inc. v. Anchin, Block & Anchin LLP*, No. 09-11708 (D. Mass. Aug. 13, 2012) (Exhibit A). The Respondents' joint motion seeks to bar Ms. Cornwell from introducing evidence and testimony in the civil litigation concerning the Commission's and the Department of Justice's ("DOJ") investigation of this matter. The Respondents' joint motion contained the following statements concerning this matter:

> Anchin received no action letters from both the DOJ and FEC indicating that the firm would not be charged. Although the defense [Anchin] has no way of knowing why Cornwell has not been charged, [Cornwell's] counsel has represented that the DOJ chose not to charge Cornwell. The FEC investigation remains open.

Id. at 2-3.

II. THE RESPONDENTS DID NOT DISCLOSE CONFIDENTIAL INFORMATION WITHIN THE MEANING OF 2 U.S.C. § 437G(A)(12)(A) AND 11 C.F.R. § 111.21.

The Complaint alleges that the Respondents violated FECA and Commission regulations by stating, *inter alia*, in a public civil litigation pleading that "[t]he FEC investigation remains open" with respect to Ms. Cornwell. Complaint at 3-5. However, as is detailed below, Commission precedent makes clear that the confidentiality provisions of the Act and FEC regulations do not prohibit such a statement. Accordingly, there is no reason to believe that the Respondents violated FECA and FEC regulations and the Commission should dismiss the Complaint.

A. Applicable Statute and Regulations

The Act states that "[a]ny notification or investigation . . . shall not be made public by the Commission or by any person without the written consent of the person receiving such notification or the person with respect to whom such investigation is made." 2 U.S.C. § 437g(a)(12)(A). FEC regulations further provide that "no complaint filed with the Commission, nor any notification sent by the Commission, nor any investigation conducted by the Commission, nor any findings made by the Commission shall be made public by the Commission or by any person or entity

without the written consent of the respondent with respect to whom the complaint was filed, the notification sent, the investigation conducted, or the finding made." 11 C.F.R. § 111.21(a).

B. Publicly Divulging That an FEC Complaint Has Been Filed Is Not Prohibited

The Commission has held on numerous occasions that the existence of and the allegations contained in a complaint filed with the FEC may be publicly disclosed and that statements concerning such matters are not subject to the confidentiality requirements of Section 437g(a)(12)(A) of the Act and Section 111.21 of the FEC's regulations. *See, e.g.*, Advisory Opinions 1995-1 (Fulani for President) and 1994-32 (Gasnik); MURs 3573, 3170, 3169, 3168, 1244, and 298. Although the confidentiality provisions of the Commission's regulations refer to the filing of a complaint, the Commission has made clear that Section 111.21 must "be read in conjunction with the statute" and prohibits divulging information about FEC complaints "only if such disclosure also amounts to disclosure of a Commission notification or investigation." First General Counsel's Report in MUR 1244 (McGovern) at 4 (Aug. 15, 1980). *See also id.* ("[T]he statute does not proscribe a complainant from publicizing the fact that a complaint will be filed or has been filed."). Accordingly, the Commission has:

> [F]ound no reason to believe the confidentiality provisions were violated for each of the following actions: holding a press conference regarding a decision to file a complaint; publishing in a newsletter, press release, or flier the fact that a complaint has been filed and details or quotes from the complaint; sending a letter to broadcasters informing them about a filed complaint and even giving a copy of a filed complaint to a reporter.

First General Counsel's Report in MUR 3168/3169/3170 (North Carolina Republican Party) at 8 (July 19,1991) (internal citations omitted). *See also* Advisory Opinion 1994-32 (Gasink) at 2 (noting that the Commission has determined repeatedly over the years that the confidentiality provisions "are not applicable to situations involving the complainant's conduct leading to the publication or discussion of information or allegations contained in a complaint").

When the Respondents self-reported potential violations of the Act and FEC regulations, the *sua sponte* submission filed with the Commission was essentially a

complaint that the Respondents filed against themselves and Ms. Cornwell. As noted above, Commission precedents establish that the Respondents may publicly disclose the existence of their complaint as well as the contents and allegations contained therein. The Respondents' *sua sponte* submission alleged that Ms. Cornwell violated the Act and FEC regulations, which evidently was sufficient for the Commission to name Ms. Cornwell as a respondent in MUR 6454. When the Respondents noted in their August 13, 2012 joint motion in the civil litigation involving Ms. Cornwell that the Respondents had filed a *sua sponte* submission with the Commission, the Respondents did no more than acknowledge that they had a filed a complaint with the Commission, and the public disclosure of such information is clearly permissible under the Act and FEC regulations.

C. Publicly Divulging That an FEC Complaint Remains Pending Is Likewise Not Prohibited

Similarly, Commission precedents make clear that Respondents and other persons are not prohibited from publicly divulging that a FEC enforcement action remains pending and is ongoing. In MUR 3222, the respondent wrote a letter to the Chairman of the FEC inquiring about the status of a complaint that the respondent had filed and expressing concern that the matter remained pending and that the Commission had failed to take final action. The respondent made the foregoing letter publicly available, and references to the letter later appeared in several news stories. In finding no reason to believe that the respondent violated Section 437g(a)(12), the Commission explained that:

> Nothing in the letter discusses what action the Commission has taken in its investigation of MUR 2673, or whom the Commission has notified or otherwise contacted. Rather, the information more closely resembles that which is contained in complaints and the publication of which the Commission has found does not violate confidentiality. Moreover, the pendency of a MUR does not suddenly make the dissemination of already public information illegal solely because it related to the subject matter of the MUR. Rather, it is the release of information regarding actions the Commission has taken during the pendency of a MUR which is illegal.

First General Counsel's Report in MUR 3222 (McCloud) at 5 (May 28, 1991). *See also* Advisory Opinion 1995-1 (Fulani for President) (concluding that a respondent

could publicly release the respondent's response in an ongoing enforcement action without violating the Act's confidentiality provisions).

When the Respondents indicated in their August 13, 2012 joint motion in the civil litigation action that MUR 6454 remained pending, the Respondents stated no more than did the respondent in MUR 3222 in which the Commission found no reason to believe that a violation occurred. In stating in their civil motion papers that "[t]he FEC investigation remains open," the Respondents merely indicated that a MUR was still pending but did not disclose any confidential information within the meaning of 2 U.S.C. § 437g(a)(12) and 11 C.F.R. § 111.21.

D. A Violation of the Act's Confidentiality Provisions Requires Disclosure of Commission Action or the Existence of a Post-"Reason to Believe" Finding Investigation

Of the dozens of MURs related to possible violations of FECA's confidentiality provisions, it appears that only once has the Commission found reason to believe that a violation occurred. The FEC Office of General Counsel has noted that:

> In MUR 298, the Commission found reason to believe that unknown persons violated 2 U.S.C. § 237g(a)(3), the predecessor to the current confidentiality statute, when a newspaper article revealed the Commission's decision to issue a subpoena in an open case. MUR 298, together with the more recent MURs that have resulted in no reason to believe findings, suggest that a violation of the confidentiality provisions *must involve public disclosure regarding actions the Commission has taken during the pendency of a MUR or of the investigation itself.*

First General Counsel's Report in MURs 3168/3169/3170 (North Carolina Republican Party) at 9 (July 22, 1991) (emphasis added). The term "investigation" is used narrowly in the Act, which provides that "[a]n investigation shall be conducted in any case in which the Commission finds reason to believe that a violation of a statute or regulation over which the Commission has jurisdiction has occurred or is about to occur." 11 C.F.R. § 111.10(a). *See also* 2 U.S.C. § 437g(a)(2) (Upon finding "reason to believe that a person has committed, or is about to commit, a violation . . . [t]he Commission shall make an investigation of such alleged violation . . . .").

The Commission has ruled that the term "investigation" in the broader sense may be used publicly without impermissibly disclosing the existence of an "investigation" in the narrow sense within the meaning of FECA. For example, in MUR 1244, a complainant publicly stated that an "[FEC] investigation is also being pursued in certain other states—Idaho, Iowa, and Indiana—to determine if NCPAC [the respondent] was involved in the selection of candidates." First General Counsel's Report in MUR 1244 (McGovern) at 2 (Aug. 15, 1980). The Commission ultimately found no reason to believe that the foregoing statement violated the Act's confidentiality requirements, in part because the individual who made the disclosure had no way of knowing whether or what action the Commission had taken in the enforcement action. *See id.* at 4-5.

When the Respondents indicated in their civil motion papers that "[t]he FEC investigation remains open," they used the term "investigation" in the broad sense and merely stated that a MUR remained open with respect to Ms. Cornwell. Like the respondent in MUR 1244—in which no reason to believe was found—Anchin and Mr. Snapper were not privy to any information concerning the status of MUR 6454 regarding Ms. Cornwell, whether the Commission had found reason to believe that Ms. Cornwell has violated the Act, whether the Commission had issued any subpoenas concerning Ms. Cornwell, or any other information that is subject to the Act's confidentiality provisions.

For all the foregoing reasons, the Commission should find no reason to believe that the Respondents violated the confidentiality provisions contained in 2 U.S.C. § 437g(a)(12) and 11 C.F.R. § 111.21.

III. IN ANY EVENT, MS. CORNWELL HAS DIVULGED TO THE PUBLIC FAR MORE INFORMATION CONCERNING MUR 6454 THAN HAVE THE RESPONDENTS

It is worth noting that on the very same day that the Complaint was filed, Ms. Cornwell published a column in *The Huffington Post* disclosing details of the Commission's investigation in MUR 6454:

> I continue to face a stiff administrative penalty from the Federal Election Commission because of Snapper's use of my money for illegal campaign contributions to Hillary Clinton and former Virginia governor Jim Gilmore. I don't object to paying a fine, as my funds absolutely were used by Evan Snapper to violate federal campaign

> laws, and those civil laws hold me accountable even if I didn't know a violation had occurred.

Patricia Cornwell, *Stranger Than My Fiction*, The Huffington Post, Oct. 2, 2012, http://www.huffingtonpost.com/patricia-cornwell/anchin-campaign-contributions-suit_b_1929734.html (Exhibit B). *See also id.* (alleging that Mr. Snapper "hasn't received even one small punishment from DOJ or the FEC").

Ms. Cornwell also divulged details concerning the Commission's ongoing investigation in MUR 6454 to a journalist in an interview which was published in *The Independent* within a month of filing the Complaint in the present matter. The article in *The Independent* reported that:

> Cornwell was accused of masterminding an illegal conduit scheme in violation of federal campaign finance law. . . . She [Cornwell] accepts that her funds were used in a felony, and is prepared to pay any fine imposed by the Federal Election Commission (FEC). This is because the FEC imposes fines not just for intentional improprieties, but for reimbursements that are unknowing and not willful.

James Kidd, *Patricia Cornwell and the Strange Case of the Missing Millions*, The Independent, Oct. 28, 2012, http://www.independent.co.uk/arts-entertainment/books/features/patricia-cornwell-and-the-strange-case-of-the-missing-millions-8227231.html (Exhibit C). *See also id.* (divulging that "[a] civil investigation by the Federal Election Commission is still to be resolved").

It is telling and highly ironic that Ms. Cornwell—at nearly the same time that she filed the instant Complaint and erroneously alleged that the Respondents had violated the Act's confidentiality provisions—was herself publicly disseminating detailed information concerning MUR 6454, which remains an ongoing and pending enforcement action. Needless to say, Ms. Cornwell's incongruous conduct is all the more reason for the Commission to find no reason to believe that a violation occurred.

IV. CONCLUSION

For all of the reasons set forth above, the Commission should find no reason to believe that the Respondents violated FECA and FEC regulations and should promptly dismiss the Complaint.

Sincerely,

Michael E. Toner
Brandis L. Zehr

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CEI ENTERPRISES, INC. a/k/a CORNWELL ENTERPRISES, INC., PATRICIA D. CORNWELL, and STACI GRUBER, Ph.D., Plaintiffs, v. ANCHIN, BLOCK & ANCHIN LLP, Defendant.	Civil Action No. 09-11708-GAO **MOTION TO EXCLUDE, TO COMPEL, AND FOR CONTINUANCE**

DEFENDANTS' MOTION AND MEMORANDUM OF LAW IN SUPPORT OF THEIR MOTION TO PRECLUDE TESTIMONY AND EVIDENCE CONCERNING THE GOVERNMENT INVESTIGATION INTO CAMPAIGN FINANCE VIOLATION AND LATE-DISCLOSURE OF LEGAL INVOICES; AND ALTERNATIVE MOTION TO COMPEL

Anchin Block & Anchin, LLP ("Anchin") and Evan H. Snapper ("Snapper") (collectively "Defendants") respectfully move for an Order precluding Plaintiffs' from introducing evidence, testimony, or any line of questioning concerning the Department of Justice ("DOJ") investigation into Patricia Cornwell concerning the campaign bundling incident. Moreover, Defendants respectfully move to preclude Plaintiffs from drawing any inferences from the government's investigation. As a basis for this motion, Defendants assert that this issue is irrelevant and highly prejudicial. Additionally, Defendants respectfully move to preclude the late disclosure of heavily redacted legal invoices provided by Plaintiffs to substantiate the supposed damages incurred by Cornwell in defending the DOJ investigation. In the alternative, Defendants' respectfully move to compel disclosure of additional information.

Background

This is primarily a business dispute arising out of Anchin's work as accountants and business managers to CEI Enterprises, Inc. ("CEI") and Patricia Cornwell ("Cornwell"). Snapper, as a former Anchin principal, was the person primarily responsible for handling Plaintiffs' account during most of the relationship. Part of Snapper's job responsibilities included providing advice and assistance to Cornwell in connection with her donations to various political campaigns. In furtherance of Cornwell's desire to anonymously support the campaign of her friend Jim Gilmore and later request that Snapper find a means to support Hillary Clinton's presidential campaign above and beyond the campaign finance law limitations, which she had already maxed, Snapper arranged for straw persons (including himself, his wife, Cornwell's family members certain Anchin employees) to make donations in their own name to these campaigns with the understanding that they would be reimbursed by Cornwell. These transactions were in violation of federal campaign finance laws. Although Cornwell was generally aware of these transactions, she claims that she did not realize they were illegal.

In 2009, after the relationship between Plaintiffs and Defendants ceased and this lawsuit commenced, Snapper self-reported the incident to the FBI and the Federal Election Committee ("FEC"). As a result of Snapper's self-report, the DOJ and the FEC initiated investigations into the facts and circumstances surrounding the violations. Snapper, Anchin and Cornwell were among those that the DOJ and FEC investigated. Ultimately, Snapper pleaded guilty to one count of providing false information—a felony—and settled charges with the FEC. Anchin received no action letters from both the DOJ and FEC indicating that the firm would not be charged. Although the defense

has no way of knowing why Cornwell has not been charged, Plaintiffs' counsel has represented that the DOJ chose not to charge Cornwell. The FEC investigation remains open.

Argument

I. Proposed Testimony Concerning The Government's Criminal Investigation And Results Thereof Are Irrelevant

Only relevant evidence is admissible. *Fed.R.Evid.* 402. Here, Plaintiffs have indicated their intention to introduce evidence of the DOJ's decision not to prosecute Cornwell as evidence that Cornwell was somehow innocent, wrongly investigated, and deserves to recover the legal fees she incurred because she was forced to respond to the government's investigation. Pls. Fifth Amend. Comp. ¶ 34 (b) attached hereto as Exhibit A. The government's decision not to prosecute Cornwell is not evidence that she is innocent, so it is irrelevant to this case before the Court. Courts that have considered this issue have concluded that the government's decision not to prosecute is not admissible as evidence of innocence. In *U.S. v. Candelaria-Silva*, 166 F.3d 19 (1st Cir. 1999), a criminal drug case, the 1st Circuit upheld the District Court's decision to exclude the defendants' proposed evidence concerning their recent acquittal of a drug offense in a related case because such evidence was irrelevant. *Id.* at 34. Specifically, the 1st Circuit wrote that "cases are dismissed for many reasons unrelated to the defendant's guilt. The introduction of evidence of a dismissal could well mislead the jury into thinking that a defendant was innocent of the dismissed charge when no such determination has been made." *Id.* at 35. This reasoning extends to the civil context as well. *See In re Carbon Black Antitrust Litigation*, No. 03-CV-10191, 2005 WL 2323184 *2 (U.S.D.C., D. Ma.,

Sept. 8, 2005). In *Carbon Black*, an antitrust case, this Court preemptively stated that a party "will not be permitted to introduce evidence on the merits that the closing of the [antitrust] investigation is somehow evidence that no conspiracy exists." *Id.* at *1.

Whether in the criminal or civil context, Plaintiffs wish the finder of fact to draw certain inferences based on the fact that the government decided not to prosecute Cornwell after Snapper cooperated with the authorities. Plaintiffs assert that Snapper "falsely" caused the government to investigate Cornwell, and the government's decision not to prosecute Cornwell is proof positive that Cornwell is free of blame. However, the reasons underlying the government's decision not to prosecute Cornwell is irrelevant. Snapper neither directed nor caused the government to investigate Cornwell. The government made its own decisions based on what it thought was the most prudent course of action. As *Candelaria-Silva* explicitly stated, cases are dismissed for a variety of reasons, none of which is indicative of a party's culpability. As such, Plaintiffs cannot attempt to introduce any evidence of the investigation to prove that Cornwell was somehow wronged by virtue of the government not filing charges against her. Therefore, evidence that the DOJ investigation did not result in Cornwell being charged should be excluded because it is not probative of her innocence.

II. Allowing Testimony Concerning the Government Investigation Would Be Unfairly Prejudicial

Assuming *arguendo* that testimony concerning the DOJ investigation is relevant, such evidence may be excluded "if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." *Fed. R. Evid.* 403.

The risk of unfair prejudice and confusion of the issues against Defendants is apparent: Snapper's decision to report the violations to the FBI and FEC ultimately resulted in him being charged and pleading guilty, but did not result in Cornwell being charged. However, Snapper is not on trial as to whether or not he violated the campaign finance laws. In fact, Snapper's guilt has no probative value concerning Cornwell's claim that she is innocent and was falsely accused by Snapper. The fact that Snapper was charged and Cornwell was not does not prove that she was innocent because Snapper's actions were clearly intended to benefit Cornwell since she admittedly wanted to support these candidates. Snapper had nothing to gain, but lost close to everything in the process. He clearly will be tainted in the eyes of the jury as a result of the conviction and the disparate results may confuse the jury. For example, the jury may believe that they do not have to assess what Cornwell knew since the government already determined that it would proceed only against Snapper, but Cornwell admittedly had a general understanding of both the campaign finance law limitations and that Snapper was arranging for people to contribute to candidates in furtherance of her desire to support them. As such, any testimony concerning the DOJ investigation, especially Snapper's conviction and the government's decision not to prosecute Cornwell, would be highly prejudicial, while proving nothing. Snapper may have pleaded guilty to one criminal count, but it is up to the jury to determine, based on the evidence before them in this trial, the level of culpability between Cornwell and Snapper as it relates to the campaign violation. The government's criminal investigation, therefore, lacks probative value, is highly prejudicial, and Plaintiffs should be precluded from introducing any evidence

concerning the investigation, Snapper's conviction or the government's lack of action against Cornwell.

II. Evidence of Purported Damages Suffered By Plaintiffs From This Investigation Was Not Timely Disclosed and Should be Precluded

Should the Court find that the proposed testimony of the government investigation is irrelevant and inadmissible, it follows that any evidence purported to support Plaintiffs' damages claim for the investigation is also inadmissible. In the alternative, under Rule 26(a)(1)(A)(iii), Plaintiffs were required to provide upon initial disclosure the following:

> A computation of each category of damages claimed by the disclosing party—who must also make available for inspection and copying as under Rule 34 the documents or other evidentiary material, unless privileged or protected from disclosure, on which each computation is based....

Moreover, under Rule 26(e), a party is required to supplement its response "*in a timely manner* if the party learns that in some material respect the disclosure or response is incomplete or incorrect..." *Fed.R.Civ.P.* 26(e). (emphasis supplied). Courts have broad discretion in imposing Rule 37 (c) sanctions for Rule 26 violations. *Ortiz-Lopez v. Sociedad Espanola de Auxilio Mutuo Y Beneficiencia de Puerto Rico*, 248 F.3d 29, 34 (1st Cir. 2001). Rule 37(c) describes the typical remedy for the failure to disclose and the circumstances when such a failure may be justified:

> If a party fails to provide information or identify a witness as required by Rule 26(a) or (e), the party is not allowed to use that information or witness to supply evidence on a motion, at a hearing, or at a trial, unless the failure was substantially justified or is harmless.

Fed.R.Civ.P. 37(c)(1). *See also Ortiz-Lopez,* 248 F.3d at 33. In other words, the "required sanction in the ordinary case is mandatory preclusion." *Klonoski v. Mahlab,* 156 F.3d 255, 269 (1st Cir. 1998).

On August 8, 2012, Defendants received Plaintiffs' disclosure of legal invoices to support their damages claim related to Cornwell's defense of the government investigation. *See Exhibit B.* The late production of these invoices was not substantially justified, nor were they timely disclosed under Rule 26. Indeed, on July 25, 2011, Defendants' submitted a Third Request for Production, requesting, *inter alia*, "[a]ll documents including but not limited to bills, detailed time records, and proofs of payment that refer or relate to the substantial legal fees that Plaintiffs allege were caused by Defendants" pursuant to the government's investigation into unlawful campaign contributions. *Exhibit C.* In response, on August 24, 2011, Plaintiffs objected to the document request on attorney/client privileged grounds, but provided that they will "produce summaries of bills relating to the investigation specified in [the] Request sufficient to show the attorneys who worked on the matter, the hours worked, and the total time billed." *Exhibit D.*

Almost one year later and less than five weeks before the previously scheduled trial date of September 10, 2012, Plaintiffs' counsel sent Defendants a 282-page attachment of heavily redacted legal bills purportedly to show the damages that Cornwell incurred defending against the government investigation.[1] Plaintiffs do not have a viable justification for delaying the production of these documents more than one year after they were requested and less than five weeks before the previous trial date. These documents should, therefore, be precluded. *Mahlab*, 156 F.3d at 269.

[1] The disclosure also purportedly encompasses damages stemming from the Garfield Road property. For the purposes of this Motion, only the purported damages related to the government investigation is relevant.

Additionally, the late disclosure is not harmless. *Fed.R.Civ.P.* 37(c)(1). The invoices are heavily redacted and do not present a sufficient opportunity to understand, prepare, and challenge the nature and necessity of the services that Plaintiffs used to defend against the government investigation. Without an opportunity to test the reasonableness of the legal fees to support Plaintiffs' damages claim, Defendants' only option would be to take Plaintiffs' for their word. Accordingly, Plaintiffs should be precluded from introducing this evidence because the disclosure unjustifiably violated Rule 26, the late disclosure was not harmless, and this Court has discretion to preclude such evidence under *Fed.R.Civ.P.* 37(c)(1).

III. Alternatively, Defendants Move to Compel Production of More Detail

If the Court permits the belatedly-disclosed documents, Defendants respectfully move to compel Plaintiffs to produce more detail concerning the nature of the services rendered under *Fed.R.Civ.P.* 37(a)(1), (3)(A). Without knowing the nature and description of the particular legal services rendered, Defendants cannot challenge the necessity of the legal services used to support Plaintiffs' damages claim. Accordingly, Plaintiffs should be directed to provide un-redacted copies of the invoices so the defense can determine whether the services are related and reasonable. Further, to the extent the time entries are not self-explanatory or raise other questions, the defense should be permitted to examine the timekeepers at a deposition before trial.

Conclusion

For the foregoing reasons, Defendants' respectfully request that this Court enter an Order precluding Plaintiffs' from introducing any evidence or drawing any inference from the government's investigation into the campaign bundling violation. Moreover,

Defendants respectfully move to preclude Plaintiffs from introducing the belatedly disclosed evidence concerning the legal fees incurred. Alternatively, Defendants move to compel production of more detailed invoices without redaction.

Date: August 13, 2012

ANCHIN, BLOCK & ANCHIN LLP
and EVAN H. SNAPPER,

By Their Attorneys,

/s/Thomas R. Manisero
Michele Sears, BBO#655211
Thomas R. Manisero, *Pro Hac Vice*
Peter J. Larkin, *Pro Hac Vice*
Gregory J. Bautista, *Pro Hac Vice*
WILSON ELSER MOSKOWITZ EDELMAN & DICKER LLP
260 Franklin Street
Boston, Massachusetts 02110-3112
(617) 422-5300
Email: Michele.Sears@wilsonelser.com
Thomas.Manisero@wilsonelser.com
Peter.Larkin@wilsonelser.com
Gregory.Bautista@wilsonelser.com

/s/ James M. Campbell
James M. Campbell BBO#541882
Campbell Campbell Edwards & Conroy, PC
One Constitution Center, 3rd Floor
Boston, MA 02129
P: 617-241-3000
F: 617-241-5115
Email: jmcampbell@campbell-trial-lawyers.com

LOCAL RULE 7.1(A)(2) CERTIFICATION

I hereby certify that counsel for the plaintiffs and defendants have conferred and attempted in good faith to resolve or narrow the issues presented by this motion.

/s/ Thomas R. Manisero
Thomas R. Manisero

CERTIFICATE OF SERVICE

I, Thomas R. Manisero, hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified in the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non registered participants on this 13th day of August, 2012:

/s/ Thomas R. Manisero
Thomas R. Manisero

Stranger Than My Fiction

Posted: 10/02/2012 6:04 pm

E pluribus unum was officially replaced as the motto of the United States in 1956, the year I was born, when Congress passed an act making "In God We Trust" the official motto.

I would like to trust in America's God but I'm no longer sure Who that is. I would like to believe in America's claim of justice for all.

Right this minute I don't. I hope it won't be true that I never will again.

After three years and millions of dollars – more than I paid for a decade of trying to catch the most notorious serial killer of all time, Jack the Ripper – I didn't get my day in court this month.

The trial for my lawsuit against my former business management company, Anchin Block & Anchin, was postponed just weeks before it was to begin when an unrelated criminal case took priority in Boston's federal courthouse. Next, that criminal trial was postponed, too, with no option of our recovering my long-scheduled court date.

I've done a lot of reflecting during a time when I should have been in a trial that might finally end a true horror show produced by Anchin. I've begun to wonder where I live and if it really is the America that ensures justice for the people and doesn't favor institutions that do the bidding of those in power. I'm an individual citizen, simply one. I'm not a bank or a huge accounting firm. If I didn't have money and means to protest, I would be ruined. It's possible I might even be wrongfully imprisoned for a crime I didn't commit.

These past three years have been the most harrowing ones of my life. I'm sure the opposition loves to hear that. It certainly seems they've done their very best to mount a campaign of terror against my family, friends, my partner and me. I guess the point was to teach me a lesson for daring to instigate a legal battle against a financial institution that I believe completely violated my trust, and grossly and recklessly mishandled my money and just about every aspect of my life they had legal power over and controlled. Anchin Block & Anchin was a meteor hurtling through space toward my unsuspecting small planet. I'm forever damaged by them and so are people I love.

The postponement of my trial against Anchin, which was due to begin on September 10, isn't the first time my war against this accounting firm with every advantage has run into delays, roadblocks and a series of unexpected and shocking assaults that include Anchin and its former principal Evan Snapper falsely accusing me of criminal activity that could have sent me to prison. This accusation came mere weeks after I filed my lawsuit against Anchin, and it would be the better part of a year later when the Department of Justice (DOJ) finally closed the case against me at the end of 2010. (My counsel was informed that I wasn't a target and that the investigation was over. Whether this decision was based on their awareness of problems in the case or the Grand Jury refusing to indict me for something I didn't do, I'm not allowed to know.)

I continue to face a stiff administrative penalty from the Federal Election Committee because of Snapper's use of my money for illegal campaign contributions to Hillary Clinton and former Virginia governor Jim Gilmore. I don't object to paying a fine, as my funds absolutely were used by Evan Snapper to violate federal campaign laws, and those civil laws hold me accountable even if I didn't know a violation had occurred. What concerns me enough to write this blog is that I continue to fear that my lawyer Joan Lukey and I may not be fighting on a level battlefield.

It may be more than a coincidence that when Ms. Lukey filed the multi-million dollar lawsuit in October 2009, Anchin quickly retained the services of James Cole – a Washington insider who soon after would be nominated by President Obama to serve as Deputy Attorney General of the United States, the number 2 position at the Department of Justice. Anchin hired him not to defend them against my civil lawsuit, but to launch a strategy of an entirely different nature. Unbeknownst to us, after retaining Mr. Cole's services Anchin went straight to the DOJ, supposedly to "self-report" illegal campaign contributions Snapper made with my funds. From my point of view, Anchin's motivation wasn't to "come clean" but to destroy my character and my life.

I was aware of some contributions that Snapper made or reimbursed with my money, but not that they were wrong. He's a lawyer and an accountant, and I had no idea anything he might instigate on any front was against the law. Nor did I know the details of what was given or how reimbursements were made or that Anchin personnel falsified financial records to hide the illegal scheme. For Anchin to go to the DOJ and blame me for all of this only weeks after I'd sued them for millions of dollars in damages should have

been suspected as an obvious ploy to derail the lawsuit. One might think federal agents would have considered that carefully before storming my camp.

I'm a crime writer who has worked with law enforcement including the FBI for most of my career. I'm not known for breaking the law. I have no inkling of any serious legal infraction beyond a DUI in 1993 that I've been completely open and sorry about. There was no good reason to assume that I was the one who had engaged in campaign improprieties. I wasn't the one who issued the reimbursements from my funds. I didn't write the checks, sign the checks, or even see them. I'm not a political potentate or a fundraiser or an activist. For the most part, when I've supported Republicans and Democrats alike, it's been because I know and respect the candidate or have been given a recommendation by someone whose opinion I value. To treat me and those I love the way the DOJ did is unconscionable. It's caused me to seriously question the democracy I thought I knew.

On the last Friday in January, 2010, the FBI descended upon my friends and family as if we were the mafia, deploying eight agents simultaneously to show up unannounced at various workplaces, a home, and even a nail salon to interrogate one of my closest friends and her husband, as well as my brother and his wife, all based on Snapper's false claims to the DOJ that illegal campaign contributions that he funded with my money were masterminded by me, that I recruited the participants (which, as it turned out, included almost a dozen Anchin partners, employees, spouses and friends, most of whom I had never even heard of), and that I directed all repayments. It would seem that Anchin and its counsel, James Cole, must have been quite convincing for the DOJ to implement such terrifying tactics against people with no criminal backgrounds or evidence of habitual political contributions.

I have no criminal record and no ties to individuals engaged in criminal activities, and yet the FBI didn't request my side of the story before it struck. I wasn't contacted. Nor was Ms. Lukey. Maybe it's nothing more than a coincidence that Anchin's attorney, James Cole, was destined to be the superior of the very authorities who went after us as if we were Mafiosos and our surname was Soprano.

A Grand Jury was convened that would sit for the better part of eight months, and not one Anchin person was compelled to testify before it or even to go to Washington, D.C. for interviews. Instead, the DOJ went to Anchin's plush headquarters at 1375 Broadway in New York City and questioned them there. In stark contrast, my people were compelled to testify before the Grand Jury in D.C., and eventually I was interrogated for eight hours by prosecutors for the DOJ's Public Integrity Unit in Washington while my partner Staci sat alone in a small windowless room, worrying herself sick about what was going to happen to me.

For more than six months, my civil suit and this terribly distressing criminal investigation continued on parallel tracks. During half that period, Mr. Cole's nomination as Deputy General Counsel was formally in process or publicly known to be impending, the confirmation slowed by Republican reluctance over his former role with insurance and financial behemoth AIG. One week after the Senate Judiciary Committee passed Mr. Cole's nomination on to the full Senate, a major hurdle in the nomination process, the lead prosecutor contacted Ms. Lukey to tell her that the DOJ would seek to intervene in my lawsuit and halt it from proceeding.

Ms. Lukey was appalled by the coincidence of timing and the detrimental effect of stopping our case just weeks before the depositions of Snapper and the other key Anchin principals were scheduled to occur. She asked the attorneys of the DOJ's Public Integrity Unit to recuse themselves and appoint an independent investigator, emphasizing that it was important to prevent even the appearance of conflict relating to Cole's immediately preceding role as Anchin's advocate. The DOJ prosecutor's response was to "take umbrage," and beyond that, no one from the DOJ ever responded to her request in any fashion. Ironically, that same lead prosecutor recently became Deputy General Counsel at the FEC, the agency about to fine me. We're told he's recused himself from my pending investigation.

With my civil suit ground to a halt, I found myself in the midst of a criminal investigation and Grand Jury proceeding that I didn't deserve, and I did the only thing that I could think of to prepare for what might be the inevitable. I briefed myself. I prepared for the possible scenario that I might be wrongly indicted and convicted of the felony that Anchin continues to falsely accuse me of. In the summer of 2010, I toured a women's prison in Tennessee during the writing of my Scarpetta novel *Red Mist*. It wasn't just book research.

I was familiarizing myself with a penitentiary in case I ended up in one. I visited the library, the classrooms, the chow hall, the pods and death row. I talked to convicted thieves, drug dealers and murderers, deciding if I were imprisoned, I would volunteer to teach creative writing – do whatever might be helpful to the inmates, some of whom might not have been locked up if they'd been able to afford a decent lawyer. Our criminal justice system isn't always fair, I kept thinking while I was there. If you don't have money, privilege, power and a voice, you might just be crushed.

Throughout this ugly legal nightmare, I have had very real security concerns that were amplified earlier in the lawsuit when my attorney requested the return of a scale fiberglass model of a jet intended for me, but sent through, and then retained by, Snapper. It was returned, all right – broken into several pieces and stuffed inside a used florist's box.

I don't know how others might interpret such extraordinary conduct, but I took it as an indication of a serious anger management problem and felt compelled to exercise extra caution when the litigation forced me into contact with Snapper. My personal concerns were such that, when we were set to go to trial this past September 10, we had security in place and a plan that included sequestering Ms. Lukey in an undisclosed location and making sure she was safely ridden back and forth to the federal courthouse and her law firm every day.

What sounds like the plot in one of my own novels began with discovery of a $5,000 check for a "Bat Mitzvah gift," made out to Snapper, and supposedly from me for his daughter Lydia, whom I've never spoken to or met. It would seem a minor item in what is an extremely complex case that alleges massive mismanagement and much more. But, that "gift," which I absolutely didn't authorize, set off the firestorm that catapulted me, an avid friend and supporter of law enforcement, onto the wrong side of the criminal process. That "gift" triggered Anchin's clandestine reports to the FBI and DOJ, and later the FEC, when Snapper falsely

claimed I authorized the check for his daughter as a secret "reimbursement" for a political contribution. Maybe he thought he was better off admitting to a campaign violation than telling his bosses and the world that he'd simply helped himself to $5,000 of my money.

Because of Snapper's false statements, the FBI was led to believe, among other things, that I was the mastermind of an elaborate conduit scheme that illegally raised almost $50,000 for Hillary Clinton through ticket sales for an Elton John fundraising concert in the spring of 2008. Snapper falsely accused me, and continues to do so, of planning the bundling, recruiting the people who made contributions, and then directing the repayments. He falsely accuses me of the same intentional illegality with Jim Gilmore contributions that Snapper and his wife made several months earlier. Snapper repaid his American Express card with my funds and continues to falsely claim that I was well aware of the details and knew that the act was criminal, although he also admits he never informed me such repayments were against the law. He never once went over the details of campaign law but simply said he'd "take care of it." I assumed he did so properly and legally.

Ultimately, Snapper pled guilty to a felony, his attorney informing the Court that Snapper lost his job, apparently not bothering to add that he'd remained in his same office at Anchin as a "consultant" at a reduced but substantial rate of compensation. As far as we know, he's still there today or was when we inquired quite recently. While he may not be found on Anchin's website anymore, as I write this, I believe that he still has the same Anchin office, phone extension, email address and secretary. Imagine that -- a convicted felon who may still be working for an accounting firm that proclaimed in the public record of my civil suit it hasn't received even one small punishment from DOJ or the FEC. This is despite the fact that in addition to Snapper, the head of a business unit and several other employees participated both in the scheme and, in some instances, the "cooking of the books" at Anchin that intentionally disguised the real purpose of the political reimbursements directed by Snapper. This included, for example, recording the reimbursements as relating to travel, lodging, and even design services. The obvious purpose was to prevent me -- or anybody else until I received the internal Anchin documents in my litigation documenting all of this -- from readily realizing the illegal nature of these payments.

Our civil trial against Anchin and Snapper for their breaches of duty and mismanagement has been reset for January 2013. We'll see if it's delayed again. After all, criminal trials are entitled to precedence over civil ones, and the Judge can't do much to prevent that. In the federal court, criminal trials are prosecuted by the Office of the U.S. Attorney, which reports to the DOJ.

Meanwhile I fully expect this battle will move into the public forum -- where it belongs. If President Obama is re-elected, and I hope he is, maybe he should take a close look at those his administration appoints to serve the public objectively and without conflict or unseemly allegiances. Maybe it's time to hold financial institutions accountable for their greed and questionable practices instead of bailing them out and abandoning those they've financially ruined.

In this year of celebrating my 26th Scarpetta novel, I live with the poisonous sting of unwarranted assaults upon my character, and my very identity. I am a changed woman with a different cause, but this much I know. I'm not walking away from this fight, no matter how brutal. I look forward to telling the entire story to a jury of my peers. Then justice will be done for the people and by the people.

THE INDEPENDENT

Patricia Cornwell and the strange case of the missing millions

Her bestselling crime novels made her a fortune – millions of dollars of which appear to have gone missing. Patricia Cornwell reveals all about the mystery that threatened her very livelihood.

James Kidd

Sunday, 28 October 2012

"I would be the first to say I have a lot of strange things happen to me. A lot really, truly aren't something I did. How many people get escorted off a plane because [Federal Marshals] think you're armed? I didn't cause that. I just had a cell phone on my belt. Or my dalliance with [FBI agent] Margo Bennett: who would think that could be related to what happened years later when this guy tied up a priest, and got into a shoot-out in a church? Who would ever think? I don't know. It is what it is."

Everything, it seems, happens to Patricia Cornwell. So when my phone rings one evening and Cornwell herself is on the line saying she wants to discuss one of the most trying periods of her life, I am intrigued to say the least. Whatever could it be? Alien abduction? When she mentions she is coming to London to continue her infamous research on Jack the Ripper, I wonder whether she has finally cracked the case. I am summoned to the Savoy for an audience.

Interviews with Cornwell are never mundane, frequently entertaining and often profoundly confessional. She discusses issues many people would hesitate to share with their closest friends. In previous conversations, she has talked frankly (sometimes, she admits, too frankly) about her father abandoning his family on Christmas Day, her mother's subsequent battles with depression, the abuse she suffered as a child in foster care, her own mental-health issues, her sexuality and marriage to Staci Gruber, her public support for President George Bush Sr and her comparably public falling out with his son, George W. Some habits die hard. "Some of the people I have supported [politically] were personal friends," she tells me today. "George W Bush – may god forgive me – because I knew his parents really well. I didn't realise until later that I wasn't going to support him any more."

When I arrive at the Savoy, I am greeted by Cornwell's personal manager, but only after he confirms my appearance with his iPhone. I feel a flutter of nerves. As we move through the lobby, I realise we are being shadowed by a security guard who silently accompanies us in the lift. "Hello," I say, attempting small talk. After a granite-hard stare, he smiles thinly. My nervousness increases.

Cornwell herself is more welcoming. Wearing trademark designer jeans, cowboy boots and a T-shirt featuring the family crest of Kay Scarpetta, the forensic pathologist heroine of 20 of her novels, she shows me into a sitting-room with a view of the Thames. Two others are present: Cornwell's sister-in-law Mary Daniels, and Joan Lukey, her attorney. Those nerves flutter again.

For the next two-and-a-half hours, Cornwell exhibits an array of emotions, from frustration

to resolution, outraged disbelief to righteous indignation. "You don't do this to me and my family and friends and have me throw in the towel," she says defiantly. "One thing people don't tend to anticipate about me is that I have an unbelievable capacity to endure misery because I have had so much of it. It doesn't mean I enjoy it or that it doesn't take a toll. But I am no stranger to it. I have not lived some charmed life where if you trip me up I don't know what to do because I have never felt this before. There isn't much I haven't felt."

Cornwell is referring to the lengthy, complex and "staggeringly" expensive lawsuit she began in October 2009, seeking damages estimated at $180m against her business managers, Anchin, Block & Anchin, whom she accuses of fiduciary mismanagement of her money and assets. Anchin were hired in 2004 to manage Cornwell's investments and tax liability. A personal business manager, Evan Snapper, was engaged to oversee everything from buying her helicopters to paying Cornwell's personal cable-TV bills. "I felt I had made the smartest business decision of my life. You are going to use a real firm that handles real people in the entertainment industry."

After almost five years, Cornwell ended the relationship with Anchin, Block & Anchin believing that her net worth, which she estimated to be in the region of $35m, had seemingly remained stagnant despite substantial yearly earnings in the low-eight figures.

Cornwell's initial suspicion was that there had been a significant mismanagement of her investments and expenses: paying over the odds for her part-ownership of a Warren Buffett NetJet, for instance. In reviewing files returned to her in September 2009, Cornwell found a cancelled $5,000 cheque, made to Cash, that Snapper directed be paid to himself from her funds, purportedly as a Bat Mitzvah gift to his daughter Lydia. Cornwell had never met Lydia, nor had she authorised the present. "I can't even put my hands around the fact that hiring Anchin [would turn out to be] the most dangerous thing I could have done in terms of my business, my finances and my reputation."

Cornwell's examination of her records brought other inconsistencies to light. It took months to trace the sale of a Ferrari, valued at $220,000. Although money was wired into her account, Cornwell could find no documentation (a traditional bill of sale) proving that this was the total sum paid by the vendor. "How do I know that what was wired into my account was the exact amount that was paid for that car and that someone didn't take a commission?" Cornwell asks.

Although the total sums can only be estimated, Cornwell and her legal team are attempting to trace between $40m and $60m in lost and unaccounted-for earnings. Cornwell is of the opinion that her manager, Evan Snapper, was primarily responsible for business mismanagement issues. Anchin, who are fighting Cornwell's suit, denied any money was missing, and informed Cornwell that her financial situation was a product of a costly lifestyle.

The story soon took another twist. Anchin did not take Cornwell's lawsuit lightly. In December 2009, they hired James Cole, then an attorney and now the United States' Deputy Attorney General. Late that same year, Anchin self-reported to the Department of Justice and the FBI a number of campaign donations: to Hillary Clinton's 2008 presidential campaign, and also to Virginia Governor Jim Gilmore's short-lived run to be Virginia's senator. These contributions were made on behalf of a variety of parties, including Snapper, who were later reimbursed using Cornwell's funds.

As a consequence of these payments, Cornwell was accused of masterminding an illegal conduit scheme in violation of federal campaign finance law. The disputed donations included an estimated $50,000 for tickets to a fundraising concert by Elton John for Hillary Clinton in New York on 9 April. Cornwell had intended to go, along with Gruber, friends and family, including her brother Jim, his wife Mary and their son. In the end, none of the original party attended: Cornwell flew to London to accept a Galaxy Book Award the same night. Snapper went in her place, along with several Anchin employees.

This made the donations technically illegal: Cornwell had already given the maximum allowed by law ($4,600) to Clinton's appeal. She accepts that her funds were used in a felony, and is prepared to pay any fine imposed by the Federal Election Commission (FEC). This is because the FEC imposes fines not just for intentional improprieties, but for reimbursements that are

unknowing and not willful. Cornwell strongly disputes that she had any knowledge the reimbursements were made, that they were illegal, or that she ever intended to commit a felony.

Snapper later admitted that he reimbursed the cost of the tickets ($2,300 apiece) from Cornwell's funds. This was the felonious conduit scheme. What would become significant is that Snapper not only used Cornwell's funds to reimburse members of the original party, including Jim and Mary Daniels, who did not attended the concert, but also the Anchin employees who did go. What he would plead guilty to in 2010 was falsifying entries in Cornwell's account ledgers. The Elton John tickets bought by Anchin were not presented as campaign donations, but journalled under headings such as clothing and meals.

Cornwell believes that the timing of Anchin's self-reporting to the Department of Justice is crucial. It was two years after the Clinton fundraiser, and two-and-a-half years after Gilmore's senate campaign, but literally within weeks of the filing of Cornwell's multi-million-dollar lawsuit.

That timing, and the fact that Anchin's submissions pointed a finger directly at Cornwell, caused a delay to the litigation. "[Anchin and Snapper were saying] that I orchestrated [the campaign donations]. That I directed payments. That's a lie. I did not orchestrate anything. I did not direct any repayments. They are saying that nice little Patricia Cornwell, the Queen of Crime, is really the Queen of Criminals."

The FBI began a criminal investigation into the campaign donations, seeking proof that Cornwell orchestrated the conduit scheme and knew that her conduct was illegal. Cornwell says the first she knew about it was when her brother called in January 2010. Although neither attended the Elton John concert, both had been reimbursed for the tickets. Both he and his wife were questioned by FBI agents without warning on the same morning. Jim had just arrived at his woodworking company. "Jim used to be Deacon in a Baptist church," Cornwell says, describing her brother. "He won't even jaywalk. There is very little political activity."

Mary was pulled out of a nail salon in Brandon, Mississippi, where the family lives. "I was done with my manicure, waiting for my friend to finish," she recalls. "The next thing I knew, I get a phone call. Someone says, 'Is this Mary Daniels? You need to put the phone down and step outside.' I was, like, 'You got to be kidding me. Who is this?'"

The "who" was an FBI agent. "She came into the nail salon, in front of everyone in the place, flashed her badge, and said, 'We need to speak to you – now.' It was unbelievably intimidating. They made me go sit in the back of a car. They sat in the front turned around, and stared at me. I was terrified what to say about anything."

Mary Daniels says the events of that day began a year-long rift in the family that healed only in December 2010. That is when the Department of Justice informed Cornwell, through counsel, that she was no longer a target of their investigation. In January 2011, Snapper pleaded guilty to a criminal charge relating to falsifying 21 campaign donations, although he maintained that he did so as an "ill-advised favour to Patricia Cornwell". A civil investigation by the Federal Election Commission is still to be resolved, as is Cornwell's original lawsuit.

Of all the elements in the case, Cornwell names the implication of illegal activity on her part as the most grievous. In practical terms, a guilty verdict could have had a grave impact on her work, preventing her from accessing high-security institutions such as prisons, FBI offices and police mortuaries. "I always joke that I am trying to get into places that everybody else is tying to get out of."

But this only goes so far in explaining Cornwell's determination to clear her name. Throughout the conversation, she returns time and again to the topic of her reputation. "It means everything to me. My guiding principle in life is the same thing that guides Kay Scarpetta – you don't abuse power. To have willingly and knowingly committed a felony in a matter of campaign contributions would absolutely be an abuse of power and I'd never do such a thing. Why would I take such a chance on something like that?"

It's a good question, one that places Cornwell's credibility and integrity squarely on trial. As the case of the campaign donations turns upon conceptions of intention and responsibility, should we believe that she is a master manipulator, or a naïve celebrity?

Unravelling Patricia Cornwell's character is quite a job. One defining challenge is distinguishing fact from fiction. In a career spanning 21 years, the 56-year-old could measure out her life in vivid media headlines. Many have centred on her phenomenal success as a crime writer: she has sold more than 100 million books in 120 countries, has been translated into at least 36 languages and her heroine, Scarpetta, has inspired a slew of imitators (from Kathy Reichs to CSI). Cornwell herself escaped a broken home and troubled childhood to become a publishing superstar with a private helicopter and celebrity friends. "Suddenly I'm in Los Angeles being introduced to Jodie Foster. I'll never forget my first visit to the Beverly Hills Hotel. I was walking around my room coming out of my skin because I was so nervous. I couldn't believe I was there."

Other headlines were more sensational. A night out with Demi Moore ended with Cornwell crashing a car while over the alcohol limit. In 1997, Cornwell was outed, in part after that "dalliance" with FBI agent Margo Bennett went public: Bennett's husband held Margo hostage, along with a Methodist minister, in a church in Virginia. Margo managed to call the police after incapacitating her husband with pepper spray and firing a warning shot.

In 2007, Cornwell successfully sued a cyberstalker, Leslie R Sachs, who accused her of, among other things, plagiarising his novel The Virginia Ghost Murders, participating in a global anti-Semitic conspiracy and, in a heartfelt poem, of being responsible for the death of his cat.

"I went from being this crime-busting trendsetter to being this source of scandal. Where I grew up [in the small mountain community of Montreat, North Carolina], scandal is not a good thing. Let's be honest, especially back in those days, not everybody will give you a standing ovation if they find out you are gay. There's no telling how much it affects the savage reviews I get on Amazon. Are they really about my books or about me?" k

It's another pertinent question to ask of someone whose life and work are in constant and fluid interrelation. "From a young age, when the world was too difficult for me to live in, I could create one of my own. I have always been going back and forth through the looking glass. I had an imaginary friend, and I would send myself on imaginary missions. I lived very much in a fantasy world."

Part of the Cornwell enigma is the shadowy presence of Kay Scarpetta, her fictional alter ego. What they share, apart from a love of fine wine and sharp sense of humour, is a courageous need to uncover the truth, no matter the odds. But there are differences, as Cornwell makes clear, talking about Snapper. "It's a problem because people think I am Scarpetta. First of all, she would have figured this guy out in one second. It may come as a shock to my fans, because Kay Scarpetta is supremely competent about running her affairs, but I am a dolt when it comes to business. I am not interested in it. I never have been. I have always got other people to do that while I am running around morgues, chasing Jack the Ripper. I don't understand investments – I wouldn't touch them with a 10ft pole. I am scared to death of losing money."

Cornwell is a complex and often contradictory personality. At its heart is a tantalising blend of determination and stubbornness, egotism and generosity, bravado and insecurity that defines many self-made, and self-reliant, success stories – something she herself concedes. "I have always felt I was on my own. I have a tremendous survival instinct. It is belied a little bit by the fact that I have this humongous artistic temperament: I am very sensitive. Those two things are kind of at war with one another. But those two characters stick together and I manage."

Her ambition drove Cornwell to keep writing after publishers rejected her first three novels. This self-confidence rubs shoulders with what appears to be a naïve candour. More than once attorney Joan Lukey corrects her outspoken client: for example, on the subject of that drunken car crash. Cornwell: "Why on earth would I commit a felony? I hadn't had a speeding ticket in over 30 years. I am fastidious, to the point of almost obsessive, about trying to play

by rules and being careful." Lukey: "20 years." Cornwell: "Well. That wasn't a speeding ticket. That was a DUI [Driving Under the Influence]." [Lukey laughs, in slight disbelief]. Cornwell: "I am open about that. That's the only thing I have gotten in trouble with. Everybody knows about that. My DUI in 1993. It's not a speeding ticket." Lukey: "It's worse than a speeding ticket, Patricia." Cornwell: "I have admitted to it. That doesn't make me a felon now."

There are times when Cornwell adopts a grandiloquent, Scarpettian tone, as if the story-teller in her has got carried away narrating her quest for justice. For instance, when I ask whether she ever considers giving up: "If I did that, what about all those people out there who don't have the means to fight someone who has grievously wronged them, and they have to live with that for ever?"

At the same time, you can't help warming to someone who clearly lives at such an intense pitch, who fights so tenaciously for what she believes in, and who is so willing to lay her cards on the table. How many other writers would admit they have encouraged friends to review books on Amazon? "I never said give me a five-star review, but I would recruit friends and family and say, 'If you know anybody, get them to post a fair review.'" Few other writers describe fame with such guileless humour. "If you are walking through the grocery store and a stranger wants to see what's in your cart, I don't particularly enjoy that. God only knows what was in it. Preparation H. 'Hi!'"

And few other writers blow their own trumpet with such winning and wide-eyed wonder. "I love my career. It's like I woke up and won the lottery. I am amazed by this every day. Yes, it's extremely hard work. This isn't something you can cause to happen. It's like a lightning strike."

If this unguardedness occasionally leaves Cornwell vulnerable, then it also underlines vulnerability as a defining theme of her life and work. From her debut on, she has transformed her deepest fears into compelling crime fiction: Postmortem, the first book in the Scarpetta series, was inspired by a serial killer terrorising women in Cornwell's neighbourhood in Richmond, Virginia.

Traces of her recent ordeals can be found in her most recent fiction. The climactic homicide trial in new novel, The Bone Bed, takes place in the same courtroom that was due to host Cornwell last month, before the trial's postponement. "My way of dealing with fear is to walk right into it," she says. Last year's Red Mist opened with Kay Scarpetta visiting a women's prison in Tennessee. "The emotional part was I was checking it out for myself. 'Here are the people who would cut your hair' – no, I'm not going to let them colour it. 'Here is the classroom where they teach English.' 'Here is the library.' I felt sick to my stomach. I couldn't imagine [my wife] Staci being put through something like this."

Talking to the inmates re-opened wounds from Cornwell's childhood – in particular, the trauma of the foster-mother who took her in whenever her own mother suffered a breakdown. "I felt that same gut-wrenching terror and grief that I felt when I would see my mother lose it. Next thing, I would go back to that awful house and that lady who would torment me for four months at a time. Psychologically, there is probably not much worse that you could have done to me," Cornwell concludes. "The only thing they could do worse would be to physically hurt Staci or me. We have really stepped up security."

After September's postponement, Cornwell's trial is due to start in January. Relief mingles with trepidation. "[The case is] not going to be without exposure. These people know everything about my life. They know what I spend. They know what I do. They know where I have lived. The good thing is, I have lived a very open life. I don't have dirty secrets."

I ask why people should sympathise with a multimillionaire seeking multi-million-dollar damages at a time when many can't pay basic bills. Cornwell admits she can't predict how the public will react. "There may be people who are appalled. There may also be people [for whom] it becomes a point of criticism about me. You are never going to please everybody. But I need to get the truth out there."

Whatever the verdict, another dramatic chapter is being written in the Patricia Cornwell story. Two things seem certain: there will be fresh fodder for Kay Scarpetta; and Cornwell

herself will persevere. She recalls talking to Gruber, as they arrived to be deposed by Anchin's lawyers. "I said, 'We are not pulling up to a clinic for chemotherapy. Put it in perspective. There are things so much worse than this. This isn't losing someone you love, or finding you are bankrupt. I am still so much luckier than most people. I am able to shoulder this. And I will.'"

'The Bone Bed' (Little, Brown, £18.99) is out now